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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 ANDREW LANCASTER, JEFFERY MILLS,  
11 DEXTER WILLIAMS, WILLIAM DENNIS,  
12 STEVE LIVADITIS, JIMMY VAN PELT,  
H. LEE HEISHMAN III AND JOHNATON  
GEORGE,

13 Plaintiffs,

14 v.

15 JAMES E. TILTON, Acting Secretary,  
16 California Department of Corrections and  
17 Rehabilitation, and ROBERT L. AYERS, JR.,  
Acting Warden, San Quentin State Prison,

18 Defendants.  
19 \_\_\_\_\_/

No. C 79-01630 WHA

**ORDER MAINTAINING  
EXISTING SCHEDULE FOR  
FURTHER EVIDENTIARY  
HEARING**

20 The Court has read plaintiffs' "statement" that they have filed a notice of appeal from  
21 the recent termination of certain provisions of the consent decree. The remaining provisions  
22 are, however, separate. They stand apart from those involved in the appeal. Therefore, we shall  
23 proceed as scheduled with the further evidentiary hearing on the conditions in Death Row as to  
24 the *unterminated* provisions. The purpose of the evidentiary hearing is not only to inquire  
25 further into disputed issues of fact but to give all counsel the very type of opportunity to  
26 subpoena and to present evidence insisted on by plaintiffs' counsel. The issues presented on the  
27 appeal, assuming it is a valid appeal, are so distinct from the remaining issues that justice and  
28 avoidance of wasted resources require that the evidentiary hearing go forward.

1           The Court has invested considerable resources in trying to comply with the requirements  
2 of the Prison Litigation Reform Act as well as *Gilmore v. California*, 220 F.3d 987 (9th Cir.  
3 2000). The calendar has been specifically adjusted to accommodate the time necessary to  
4 complete the evidentiary hearing. The Court is now steeped in the particulars of this case.  
5 A delay of the type contemplated by plaintiffs would require starting all over at square one at  
6 some future date, wasting considerable resources.

7           To take a specific example, if the court of appeals eventually holds, contrary to the  
8 December 21 order, that the Eighth Amendment requires that condemned prisoners be supplied  
9 with hobbycraft, then a further and stand-alone hearing would later be held by the district court  
10 on remand. After consideration of all declarations pertaining to hobbycraft, there was no  
11 material fact issue warranting a contest of live witnesses at a further evidentiary hearing, the  
12 question being whether a prison-wide supply of hobbycraft was constitutionally required in the  
13 first place. That was why the hobbycraft provision was terminated. By contrast, the different  
14 decree requirements now set for a contest of witnesses are those involving disputed material  
15 issues, such as the issue of supposed filth and vermin. On the latter class of issues, all counsel  
16 will have an opportunity to cross examine live witnesses and to present fresh evidence as well  
17 as to subpoena materials and witnesses. Although discovery is not required in advance of an  
18 evidentiary hearing (the opportunity to inquire being a function of an evidentiary hearing), the  
19 Court has nonetheless granted plaintiffs' counsel some advance discovery and expert access, as  
20 to certain issues to be heard at the evidentiary hearing, as well as to allow plaintiffs' counsel to  
21 depose defendants' noise expert beforehand (without, it should be added, giving the defense a  
22 reciprocal deposition of plaintiffs' noise expert, the Court being confident that any defense  
23 opportunity to cross examine at the evidentiary hearing will suffice).

24           This situation is different from the earlier stay. Then, the issue on appeal involved the  
25 very same decree provisions that were in play in the motion to terminate. Now, however, the  
26 provisions terminated and on the supposed appeal are separate from the provisions still  
27 operative and not yet on appeal. The concluding pages of the December 21 termination order  
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1 specifically identified the provisions that were terminated and segregated those that were not  
2 terminated, only the latter being set for the upcoming further hearing.

3 For all of the foregoing reasons (as well as those set forth in defendants' brief), the  
4 Court is *not* divested of jurisdiction to rule on the unterminated provisions, contrary to  
5 plaintiffs. The further evidentiary hearing will proceed as scheduled and all counsel are ordered  
6 to comply fully with the schedule.

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8 **IT IS SO ORDERED.**

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10 Dated: January 4, 2008.

  
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11 WILLIAM ALSUP  
12 UNITED STATES DISTRICT JUDGE  
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